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*Submitted Electronically via <https://foiaonline.gov/>*

Freedom of Information Officer  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW (2822T)  
Washington, DC 20460

Regional Freedom of Information Officer  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

**Re: Iowa Water Pollution and Concentrated Animal Feeding Operations**

Dear EPA FOIA Officer:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted on behalf of Food & Water Watch (FWW) and Iowa Citizens for Community Improvement (Iowa CCI) (collectively, Requesters). This request seeks documents regarding the Environmental Protection Agency's (EPA) plan, if any, to conduct oversight activities related to Iowa's implementation of the Clean Water Act (CWA) as it relates to animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs).

The Requesters and their members have a strong interest in information related to whether EPA will be prioritizing Iowa water quality issues and/or engaging Iowa Department of Natural Resources (DNR) to develop a plan that adequately addresses the role that the AFO/CAFO industry plays in Iowa's pervasive water pollution problems.

FWW is a national, non-profit, membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. Industrial livestock pollution is one of FWW's priority issues, and it is engaged in several campaigns to reduce AFO/CAFO pollution nationally through stronger regulation, transparency, and enforcement. FWW prioritizes AFO/CAFO pollution in Iowa specifically, where our work includes a campaign to advance legislation to enact a moratorium on medium and large AFOs and litigation challenging the State's failure to regulate AFO/CAFO pollution.

Iowa CCI is a grassroots, membership organization in Iowa whose mission is to empower and unite individuals to “serve as vehicles for social, economic, and environmental justice” and to address various problems and needs in the community. One of Iowa CCI’s priority campaigns is their “Fight for Clean Water,” which focuses on reducing factory farm pollution by strengthening the state’s National Pollutant Discharge Eliminating System (NPDES) program for CAFOs. Iowa CCI is also campaigning to enact a legislative moratorium on new and expanding medium and large AFOs in Iowa, and is engaged in litigation against the State for failing to regulate AFO/CAFO pollution.

### **Records Requested**

Pursuant to FOIA, the Requesters request copies of any and all documents, records and communications of any kind, including but not limited to e-mails, interoffice memoranda, and notes, (hereinafter records), relating to EPA plans to combat AFO/CAFO-related water pollution. The Requesters specifically request the following records from January 21, 2021 to the present:

1. All EPA communications with DNR and other Iowa officials regarding DNR’s implementation of the CWA as it relates to AFOs and CAFOs;
2. All records related to EPA oversight of the Iowa DNR CAFO NPDES program, including any oversight inspections or investigations conducted or enforcement actions taken regarding Iowa AFOs or CAFOs;
3. All EPA documents related to plans to engage in Iowa-specific work related to AFO/CAFO water pollution, and/or policies or goals to address the water quality impacts of the Iowa AFO/CAFO industry.
4. Any and all communications from EPA Headquarters to regional offices related to AFOs/CAFOs, including any guidance documents or policy memorandums related to CWA CAFO enforcement.

This request applies to all such records in any form, including (without limit) correspondence sent or received, memoranda, notes, telephone conversation notes, maps, analyses, agreements, contracts, e-mail messages, e-mail attachments, and electronic files the release of which is not expressly prohibited by law. It also covers any non-identical duplicates of records that by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record. Additionally, this request is not meant to be exclusive of other records that, though not specifically requested, would have a reasonable relationship to the subject matter of this request. This request does not include any records that EPA currently maintains on its website.

### **Claims of Exemption from Disclosure**

If you regard any requested records or portions of records as exempt from disclosure under FOIA, the Requesters ask that you please exercise your discretion to disclose them nonetheless. After careful review for the purpose of determining whether any of the information is exempt

from disclosure, please provide any reasonably segregable non-exempt portions of exempt records, as required by FOIA. Should you elect to invoke an exemption to FOIA, please provide the required full or partial denial letter and sufficient information to appeal the denial.

In accordance with the minimum requirements of your due process, this information should include:

1. Basic factual information, including the author, origin, date, length, and address of withheld records or portions of records; and
2. Explanations and justifications for denial, including identification of the exemption(s) applicable to the withheld information and explanations of how each exemption applies to each withheld record or portion of a record.

### **Fee Waiver Request**

The Requesters request that you waive any applicable fees for this request because disclosure is clearly in the public interest. As described below, disclosure “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l). FOIA carries a presumption of disclosure, and the fee waiver was designed specifically to allow nonprofit, public interest groups such as the Requestors access to government documents without the payment of fees. The statute is to be liberally construed in favor of waivers for noncommercial requesters. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters’”). EPA granted a fee waiver for a very similar request that the Requesters submitted on May 25, 2018 (Request number EPA-R7-2018-008059), related to EPA’s oversight of the Iowa CAFO program pursuant to a Work Plan Agreement entered into following a Petition for Withdrawal of the NPDES program authorization for the State of Iowa (De-delegation Petition). As explained below, the Requesters continue to satisfy the criteria for a fee waiver established in FOIA, described as a multi-factor test in EPA’s implementing regulations, 40 C.F.R. § 2.107(l).

#### **Requirement 1: Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government**

*Factor 1: The subject matter of the requested documents concerns operations or activities of the federal government*

The Requesters seek records related to EPA’s oversight activities of Iowa DNR’s implementation of the CWA for CAFOs. EPA delegates the authority to implement the NPDES permit program to most states, including Iowa, but maintains an important oversight role that includes authority to request information, conduct investigations, and take enforcement actions. As this request focuses on these EPA operations and activities, the information requested clearly “concerns the operations and activities of the federal government,” and therefore satisfies the first fee waiver criterion. 40 C.F.R. § 2.107(l)(2)(i).

*Factor 2: The disclosure is “likely to contribute” to understanding of federal government operations or activities*

Disclosure is “likely to contribute” to an understanding of EPA’s operations or activities, 40 C.F.R. § 2.107(l)(2)(ii), because it will shed light on how the EPA is exercising its oversight responsibilities in terms of monitoring the implementation of the NPDES program for CAFOs in Iowa. The records requested will be “meaningfully informative,” *id.*, of EPA’s activities because the information is not “already . . . in the public domain, in either a duplicative or a substantially identical form.” *Id.* Specific, current and comprehensive information about EPA’s oversight of DNR’s CAFO program is not currently publicly available. Such information will allow the Requesters and the public to better understand the extent and effectiveness of EPA’s actions in ensuring that the DNR’s CAFO program is fully in compliance with the CWA.

*Factor 3: The disclosure will contribute to “public understanding” of EPA’s operations and activities*

The disclosure will contribute to “public understanding” of the subject of the request because it will contribute to the understanding of a “reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” 40 C.F.R. § 2.107(l)(2)(iii). *See also Carney v. U.S. Dept. of Justice*, 19 F.3d 807, 815 (2d Cir. 1994) (in determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is “whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.”).

The Requesters will effectively disseminate the records and otherwise make the records and information in the records accessible and available to a broad audience of interested persons, both within Iowa and nationally. They will do so in ways that effectively contribute to the public’s understanding. FWW is a membership organization with a staff of approximately 115, including researchers, organizers, attorneys, and communications professionals. FWW has policy and legal expertise and staff regularly analyze data, including FOIA records, and use this information to write, speak, and advocate to the media and the public on environmental issues. FWW frequently uses FOIA records and other public data to draft and issue policy-based reports related to issues of public interest. Many of these reports focus in depth on CAFOs and water pollution.<sup>1</sup> FWW has also issued policy-based reports specifically addressing the impacts of CAFOs in Iowa.<sup>2</sup> FWW has a long history of analyzing federal government CAFO records, specifically, and making them available to the public in a way that is easy to understand. FWW is therefore prepared to analyze the information and present it to the public in a way that will most effectively increase public understanding of the subject.

<sup>1</sup> *See, e.g., FWW, Factory Farm Nation: 2020 Edition* (Apr. 2020), available at: [http://fwa2020prod.wpengine.com/wp-content/uploads/2021/03/ib\\_2004\\_updfacfarmmaps-web2.pdf](http://fwa2020prod.wpengine.com/wp-content/uploads/2021/03/ib_2004_updfacfarmmaps-web2.pdf).

<sup>2</sup> *See FWW, The Urgent Case for a Factory Farm Moratorium in Iowa* (Oct. 2018), available at: [http://fwa2020prod.wpengine.com/wp-content/uploads/2021/03/fs\\_1810\\_famfarmmoratoriumiowa-web.pdf](http://fwa2020prod.wpengine.com/wp-content/uploads/2021/03/fs_1810_famfarmmoratoriumiowa-web.pdf); FWW, *Costco’s New Poultry Farms are a Bad Deal for Iowa* (Oct. 2019), available at: [http://fwa2020prod.wpengine.com/wp-content/uploads/2021/03/fs\\_1910\\_iapoultryfacfarms-web\\_0.pdf](http://fwa2020prod.wpengine.com/wp-content/uploads/2021/03/fs_1910_iapoultryfacfarms-web_0.pdf).

FWW is also well-positioned to effectively disseminate the information obtained from the disclosed records such that it reaches a broad audience of interested members of the public through diverse and highly effective channels, including: emails to some or all of FWW’s hundreds of thousands of supporters nationally and roughly eight thousand supporters in Iowa alone; FWW’s website, Facebook pages, including an Iowa-specific page with over 1,100 followers, other social media outlets, and newsletter that reach even more members throughout Iowa; traditional media outlets in Iowa and nationally; press releases; blog posts on websites such as Iowa-based Bleeding Heartland; and presentations at community meetings and conferences attended by rural citizens impacted by CAFO pollution, environmental attorneys and advocates, and other interested members of the public. Recent FWW CAFO email action alerts to Iowa members, including one supporting state CAFO moratorium legislation and one opposing legislation that would penalize whistleblowers exposing conditions in CAFOs, have each generated several hundred actions, demonstrating FWW’s ability to reach many interested members of the public. FWW’s work on CAFO pollution and EPA regulation of CAFOs has garnered significant media attention, including coverage in Politico, Inside EPA, Bloomberg, Greenwire, and FWW’s recent legislative and litigation work addressing CAFO pollution in Iowa has been covered extensively by Iowa media outlets such as the Des Moines Register and the Gazette,<sup>3</sup> demonstrating FWW’s ability to reach interested members of the public with the requested information. Further, FWW is well-known to interested members of the public and to other organizations with interested members as a national leader on issues related to CAFO pollution, which facilitates FWW’s dissemination of information to this audience.

Iowa CCI prioritizes the inclusion of everyday people in the fight for justice, change, and equality in communities across Iowa. The non-profit is a membership-based organization of over one thousand members with a focus on using people power to get things done. Iowa CCI members and other Iowans look to Iowa CCI to disseminate key information about issues in their communities in order to work together to combat injustices. Iowa CCI has expertise in advocating for the regulation of CAFOs and factory farms, and is well known for this work. In 2009, “Bill Moyers Journal” featured Iowa CCI’s farm organizing initiative and described members of the organization as “advocates for the people.” Iowa CCI has a demonstrated ability to keep its members informed of the progress of its work and disseminates information through a variety of channels including its website, social media platforms, and mailing lists. Iowa CCI has also demonstrated an ability to garner significant media attention throughout Iowa, which creates an effective medium for the organization to disseminate information that it would acquire per this request. Iowa CCI’s work to improve water quality and strengthen CAFO regulation is regularly covered in major media outlets across the state.

In short, the Requestors have demonstrated ability to disseminate the requested information to Iowans and others interested in the EPA’s plans for CAFO inspection and enforcement actions in Iowa and its continued oversight of the state’s most recent actions to implement the CWA for CAFOs.

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<sup>3</sup> See, e.g., Donnelle Eller, *Group takes aim at large livestock operations it says pollutes Iowa’s water*, Des Moines Register (Feb. 9, 2021); James Lynch, *Factory farm opponents call for “bold action” from Iowa Legislature*, The Gazette (Feb. 9, 2021); Donnelle Eller, *State argues before Iowa Supreme Court for dismissal of Raccoon River pollution suit*, Des Moines Register (Dec. 17, 2020).

The Requesters will also make the information available to state and local organizations with members and supporters interested in the subject, such as the Iowa Alliance for Responsible Agriculture (IARA) and co-petitioners on the De-delegation Petition, the Sierra Club Iowa Chapter and the Environmental Integrity Project. FWW sits on the Steering Committee of IARA, which is a coalition of numerous organizations, most of which are grassroots Iowa groups focused on protecting their communities from the adverse environmental impacts of CAFOs. Requesters will share information with IARA and its membership, which is comprised of very interested members of the public. The Requestors will also share the information with regional and national organizations who have interested members, such as Earthjustice, the Socially Responsible Agricultural Project, the Center for Food Safety, the Center for Biological Diversity, Public Justice, the Waterkeeper Alliance, and the Humane Society of the United States. Cumulatively, these groups have many thousands of members in Iowa and millions of members nationwide. Due to the large collective membership of citizens impacted by CAFOs and interested in this subject, the requesters demonstrated ability to effectively analyze EPA records and disseminate information to the public directly and through the media, and their relationships with other organizations that can reach a broad audience of persons interested in the information in the requested records, the Requesters are uniquely able to contribute to “public understanding” and meet this fee waiver criterion.

*Factor 4: The disclosure is likely to contribute “significantly” to public understanding of EPA activities*

The Requesters also meet the fourth fee waiver criterion, because the public’s understanding of EPA’s operations or activities related to its oversight of DNR’s CAFO program “as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent.” 40 C.F.R. § 2.107(l)(2)(iv). Because the Requesters, coalition partners, and interested members of the public know little about EPA’s current plans for oversight of the program, the requested disclosures will undoubtedly increase public understanding of these activities by a significant extent.

None of the records requested are currently available on EPA’s website, elsewhere on the Internet, or have been previously published by EPA. As the Work Plan period ended in 2019, the requested records have significant informative value, because they will shed light on how the EPA is continuing to ensure following the Work Plan period that Iowa DNR complies with the CWA in implementing its NPDES program for CAFOs, EPA’s plans to conduct its own inspections and other activities related to CAFO pollution in Iowa, and whether Iowans can expect a compliant and protective CAFO regulatory program.

As discussed above, the Requesters have demonstrated their ability to significantly increase public understanding of EPA’s recent actions pursuant Iowa’s CAFO program and Iowa water quality. The Requesters are experienced at analyzing, synthesizing, and distilling voluminous and complex federal agency records and making them available and easily understandable to interested members of the public. In so doing, the Requesters are able to ensure that the increase in public understanding will be significant.



## **Requirement 2: Disclosure is not primarily in the commercial interest of the Requesters**

*Factor 1: The Requesters have no commercial interest in obtaining the information*

The second element of the fee waiver analysis addresses the requester's "commercial interest" in the information. Two factors must be addressed when determining whether the information requested is "primarily in the commercial interest of the requester[s]." 40 C.F.R. § 2.107(l)(1). The first factor is whether the requester has a commercial interest that would be furthered by the requested disclosure. 40 C.F.R. § 2.107(l)(3)(i). Here, as nonprofit organizations, none of the Requesters have any commercial, trade, or profit interest in the material requested. The Requesters will not be paid for, or receive other commercial benefits from, the publication or dissemination of the material requested. The requested material will be disseminated solely for the purpose of informing and educating the public and will not be used for or result in commercial gain.

*Factor 2: Disclosure is not "primarily in the commercial interest of the requester[s]"*

The second factor of the commercial interest consideration hinges on the primary interest in the disclosure, and requires a weighing of any commercial interest against the public interest in disclosure. 40 C.F.R. § 2.107(l)(3)(ii). Clearly, there is great public interest in the release of the materials sought because they will allow the public to learn about and evaluate the adequacy of EPA's oversight of the Iowa CAFO program. Thus, even if the Requesters did have some "commercial" interest in the documents requested, a complete fee waiver would still be required because the Requesters' "primary" interest in the material is to inform the public about the operations and activities of the government. Therefore, this is a situation in which the "public interest is greater in magnitude than that of any identified commercial interest" of the requester. *Id.* Of course in this case, even if the public interest were not so significant, it would clearly outweigh the nonexistent commercial interest, such that the disclosure is clearly primarily in the public interest. Therefore, the "disclosure of the information . . . is not primarily in the commercial interest of" the Requesters and a fee waiver is appropriate. 5 U.S.C. § 552(a)(4)(A)(iii).

## **Conclusion**

Accordingly, based on the above analysis, the requested records bear directly on identifiable operations and activities of the EPA, will contribute significantly to a broad public understanding of the EPA's activities and operations regarding its oversight of the Iowa CAFO program, and will not serve any commercial interest on the part of the Requesters. Under these circumstances, the Requesters fully satisfy the criteria for a fee waiver. If for some reason EPA denies the fee waiver in whole or in part, please contact me before incurring any costs related to this request. If EPA does not fully grant the fee waiver and costs are incurred prior to contacting me, the Requesters will not be responsible for those costs. The Requesters reserve the right to appeal any decision to wholly or partially deny the fee waiver request in this matter.

If you have any questions or if you require further information to identify the requested records or rule on the fee waiver request, please contact me at (646) 369-7526 or [eamiller@fwwatch.org](mailto:eamiller@fwwatch.org).

Thank you in advance for your prompt reply.

Sincerely,

A handwritten signature in blue ink that reads "Emily Miller".

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